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## DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 269

[Docket ID: DOD-2016-OS-0045]

RIN 0790-AJ42

Civil Monetary Penalty Inflation Adjustment

AGENCY: Under Secretary of Defense (Comptroller), Department of Defense.

ACTION: Interim final rule.

SUMMARY: On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990. The 2015 Act updates the process by which agencies adjust applicable civil monetary penalties for inflation to retain the deterrent effect of those penalties. The 2015 Act requires that not later than July 1, 2016, and not later than January 15 of every year thereafter, the head of each agency must, by regulation published in the Federal Register, adjust each CMP within its jurisdiction by the inflation adjustment described in the 2015 Act. Accordingly, the Department of Defense must adjust the level of all civil monetary penalties under its jurisdiction through an interim final rule and make subsequent annual adjustments for inflation.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received by [INSERT 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- \* Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- \* Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Attn: Mailbox 24, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name and docket number for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Brian Banal, 703-571-1652.

#### SUPPLEMENTARY INFORMATION:

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust the level of civil monetary penalties through an interim final rule in the Federal Register.

## **Background Information**

The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, April 26, 1996, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), Public Law 114-74, November 2, 2015 requires agencies to annually adjust the level of Civil Monetary Penalties (CMP) for inflation to improve their effectiveness and maintain their deterrent effect. The 2015 Act requires that not later than July 1, 2016, and not later than January 15 of every year thereafter, the head of each agency must adjust each CMP within its jurisdiction by the inflation adjustment described in the 2015 Act. The inflation adjustment must be determined by increasing the maximum CMP or the range of minimum and maximum CMPs, as applicable, for each CMP by the cost-of-living adjustment, rounded to the nearest multiple of \$1. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index (CPI) for the month of October preceding the date of the adjustment (January 15), exceeds the CPI for the month of October in the previous calendar year. The initial adjustment to a CMP may not exceed 150 percent of the corresponding level in effect on November 2, 2015.

Any increased penalties will only apply to violations which occur after the date on which the increase takes effect.

Each CMP subject to the jurisdiction of the Department of Defense has been adjusted in accordance with the 2015 Act. In compliance with the 2015 Act, the Department of Defense is amending its CMP penalty amounts.

## **Executive Summary**

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act). The 2015 Act updates the process by which agencies adjust applicable civil monetary penalties for inflation to retain the deterrent effect of those penalties. Agencies are required to make an initial “catch-up” adjustment for civil monetary penalties with the new levels published in the Federal Register by July 1, 2016, to take effect no later than August 1, 2016. Thereafter, agencies are required to make annual inflationary adjustments, starting January 15, 2017, and each year following, based on Office of Management and Budget (OMB) guidance. Finally, each year in accordance with OMB Circular A-136, agencies will report in the Agency Financial Reports the status of adjustments to civil monetary penalties.

### **I. Purpose of the Regulatory Action**

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74, requires the Department of Defense to adjust applicable civil monetary penalties for inflation to improve the effectiveness and retain the deterrent effect of such penalties. The implementation of this rule will deter violations of law, encourage corrective action(s) of existing violations, and prevent waste, fraud, and abuse within the Department of Defense.

#### **Description of Authority Citation**

28 U.S.C. 2461 note, mandates that not later than July 1, 2016, and not later than January 15 of every year thereafter, the head of each agency (in this case the Secretary of Defense) must adjust for inflation each civil monetary penalty provided by law within the jurisdiction of the Federal

agency (in this case the Department of Defense), except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986 [26 U.S.C. 1 *et seq.*] or the Tariff Act of 1930 [19 U.S.C. 1202 *et seq.*], through an interim final rulemaking; and publish each such adjustment in the Federal Register.

## **II. Summary of the Major Provisions of the Regulatory Action in Question**

Previously, the Debt Collection Improvement Act of 1996 required agencies to adjust civil monetary penalty levels every four years. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) Act updates this requirement with annual adjustments for inflation based on Office of Management and Budget (OMB) guidance.

In accordance with the 2015 Act, OMB will provide adjustment rate guidance no later than December 15, 2016, and no later than December 15 for each following year, to adjust for inflation in the Consumer Price Index for all Urban Consumers as of the most recent October. Agencies are required to publish annual inflation adjustments in the Federal Register no later than January 15, starting in 2017, and each subsequent year.

Agency heads are responsible for implementing this guidance and for submitting information to OMB annually on applicable civil monetary penalties through Agency Financial Reports in accordance with OMB Circular A-136.

## **III. Costs and Benefits**

There are no significant costs associated with the regulatory revisions that would impose any mandates on the Department of Defense, Federal, State or local governments, or the private sector. The Department of Defense anticipates that civil monetary penalty collections may

increase in the future due to new penalty authorities and other changes in this rule. However, it is difficult to accurately predict the extent of any increase, if any, due to a variety of factors, such as budget and staff resources, the number and quality of civil penalty referrals or leads, and the length of time needed to investigate and resolve a case.

## **Regulatory Procedures**

### **Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”**

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” because it does not: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in these Executive Orders.

## **Unfunded Mandates Reform Act (2 U.S.C. Chapter 25)**

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule the mandates of which require spending in any year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

**Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. Chapter 6)**

The Department of Defense certifies that this rule is not subject to the Regulatory Flexibility Act because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require a regulatory flexibility analysis.

**Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

The Department of Defense certifies that this rule does not trigger any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

**Executive Order 13132, “Federalism”**

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This interim final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 269

Administrative practice and procedure, Penalties.

Accordingly, 32 CFR part 269 is amended as follows:

**PART 269—[AMENDED]**

1. The authority citation for 32 CFR part 269 is revised to read as follows:

Authority: 28 U.S.C. 2461 note.

2. Revise §269.1 to read as follows:

**§269.1 Scope and purpose.**

The purpose of this part is to establish a mechanism for the regular adjustment for inflation of civil monetary penalties under the jurisdiction of the Department of Defense. Applicable civil monetary penalties must be adjusted in conformity with the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, Public Law 104-134, April 26, 1996, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74, November 2, 2015, in order to improve the deterrent effect of civil monetary penalties and to promote compliance with the law.

**§269.2 [Amended]**

3. Amend §269.2 by adding “and” after the semicolon in paragraph (b)(1)(ii).

4. Amend §269.3 by:

a. Revising the introductory text.

b. In paragraph (a):



- i. Removing “By regulation adjustment” and adding in its place “By regulation, adjust.”
- ii. Removing “the Department of Defense” and adding in its place “the Department.”

The revision reads as follows:

**§269.3 Civil monetary penalty inflation adjustment.**

The Department must, not later than July 1, 2016 and not later than January 15 of every year thereafter—

\* \* \* \* \*

5. Revise §269.4 to read as follows:

**§269.4 Cost of living adjustments of civil monetary penalties.**

(a) The inflation adjustment under §269.3 must be determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this subsection shall be rounded to the nearest multiple of \$1.

(b) For purposes of paragraph (a) of this section, the term “cost-of-living adjustment” means the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of October preceding the date of the adjustment (January 15), exceeds the Consumer Price Index for the month of October in the previous calendar year. For example, if the Consumer Price Index for October 2016 is 1.0 and the Consumer Price Index for October 2015 was 0.75, then all applicable penalties will need to be positively adjusted by 0.25 by January 15, 2017.

(c) *Limitation on initial adjustment.* The initial adjustment of civil monetary penalty pursuant to §269.3 may not exceed 150 percent of such penalty.

(d) *Inflation adjustment.* Maximum civil monetary penalties within the jurisdiction of the Department are adjusted for inflation as follows:

United States Code	Civil Monetary Penalty Description	Maximum Penalty Amount as of 10/23/96	New Adjusted Maximum Penalty Amount
National Defense Authorization Act for FY 2005, 10 U.S.C 113, note	Unauthorized Activities Directed at or Possession of Sunken Military Craft	Not Applicable <sup>1</sup>	\$124,588
10 U.S.C. 1094(c)(1)	Unlawful Provision of Health Care	\$5,500	10,940
10 U.S.C. 1102(k)	Wrongful Disclosure—Medical Records:		
	First Offense	3,300	6,469
	Subsequent Offense	22,000	43,126
10 U.S.C. 2674(c)(2)	Violation of the Pentagon Reservation Operation and Parking of Motor Vehicles Rules and Regulations	Not Applicable <sup>1</sup>	1,782
31 U.S.C. 3802(a)(1)	Violation Involving False Claim	5,500	10,781
31 U.S.C. 3802(a)(2)	Violation Involving False Statement	5,500	10,781

<sup>1</sup> Penalties were not identified in the 1996 publication of this chart and/or were not established by statute or regulation in 1996.

## **§269.5 [Amended]**

6. Amend §269.5 by removing “shall apply only to violations which occur after the date the increase takes effect” and adding in its place “must apply only to civil monetary penalties,

including those whose associated violation predated such increase, which are assessed after the date the increase takes effect (i.e., July 1, 2016).”

Dated: May 20, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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